U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: SRC 01 268 51648 Office: TEXAS SERVICE CENTER Date: MAR 26 2003

[redacted]

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

PUBLIC COPY

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The petitioner is a property management firm. It seeks to employ the beneficiary permanently in the United States as an industrial landscape designer. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor (Form ETA 750).

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements….

Eligibility in this matter hinges on the petitioner's ability to pay the wage offered as of the petition's priority date, which is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The petition's priority date in this instance is December 28, 1999. The beneficiary's salary as stated on the labor certification is $14.88 per hour, or $30,950.40 per year, based on a 40 hour work week.

Counsel initially submitted insufficient evidence of the petitioner's ability to pay the proffered wage. In a notice dated February 27, 2002 (RFE), the director requested certain evidence to establish that the petitioner had the ability to pay the

proffered wage as of the priority date. *See* 8 C.F.R. § 204.5(g)(2), *supra*.

In response, counsel submitted the letter of the petitioner's Director of Operations (DO's letter). It stated that the petitioner was a privately held corporation in business since 1986, employed in excess of 100 persons, and maintained annual revenues over one million dollars ($1,000,000).

The director determined that the evidence did not establish that the petitioner had the ability to pay the proffered wage and denied the petition.

On appeal, counsel's brief attached the petitioner's yearly income statement, showing revenues, salaries paid, and net income of $84,371.12. The petition (Form I-140) stated that the petitioner had engaged in the property management business at Hilton Head Island, South Carolina since 1986 and had 100 employees.

Counsel cites the exception in 8 C.F.R. § 204.5(g)(2):

> .... In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage....

Counsel's argument is persuasive. The record does not contain any derogatory evidence such as to persuade the Bureau to doubt the credibility of the information in the DO's letter or the supporting documentation. The petition and evidence shows a total of employees in excess of 100. Therefore, the petitioner has demonstrated its financial ability to pay the beneficiary's salary as of the priority date of the petition.

A review of the submissions leads to the conclusion that the petitioner has established that it had sufficient available funds to pay the salary offered as of the priority date of the petition and continuing until the beneficiary obtains lawful permanent residence.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has met that burden.

ORDER: The appeal is sustained.

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